

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2008-31-C - ORDER NO. 2008-589
AUGUST 22, 2008

IN RE: Application of dPi Teleconnect, LLC for Certification as an Eligible Telecommunications Carrier) ORDER GRANTING) DESIGNATION AS AN) ELIGIBLE) TELECOMMUNICATIONS) CARRIER FOR LIFELINE) AND LINK-UP SERVICE) ONLY
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This matter comes before the Public Service Commission of South Carolina (“Commission”) by way of the Application of dPi Teleconnect, LLC (“dPi” or the “Company”) for designation as an Eligible Telecommunications Carrier (“ETC”) throughout the non-rural BellSouth/AT&T-South Carolina service territories (“Designated Service Territory”) under the provisions of 47 U.S.C. § 214(e)(2) of the Federal Telecommunications Act (the “Federal Act”) and 47 C.F.R. §§ 54.401-54.417 (the “FCC’s Rules”). dPi filed its Application on January 25, 2008, seeking ETC status in order to offer Lifeline and Link-Up support to its qualifying customers, and draw from the federal Universal Service Fund (“USF”) in connection with those services.

By letter, the Commission instructed dPi to publish, one time, prepared Notices of Filing in newspapers of general circulation in the areas affected by the Application. The purpose of the Notices of Filing was to inform interested parties of the manner and time in which to file the appropriate pleadings for participation in the proceedings. The Company complied with this instruction and provided the Commission with proof of

publication of the Notices of Filing. No petitions to intervene were received. The South Carolina Office of Regulatory Staff (“ORS”) was a party pursuant to statute.

The public hearing was held on May 28, 2008, at 10:30 a.m. in the Commission’s Hearing Room, with the Honorable G. O’Neal Hamilton, Chairman, presiding. At the hearing, Lance Steinhart, Esquire, and Scott Elliott, Esquire, represented dPi. C. Lessie Hammonds, Esquire, represented the ORS. dPi presented the Direct Testimony of Brian Bolinger. The ORS presented no testimony.

BACKGROUND

dPi is a Delaware limited liability company headquartered in Dallas, Texas and was authorized to provide local exchange services in South Carolina on June 5, 2000, by Order No. 2000-470 issued in Docket No. 1998-640-C. The Company provides local exchange and exchange access services in the Designated Service Area using a combination of resale and unbundled network elements, or unbundled network equivalents obtained through commercial agreements (“UNEs”) that allow end-to-end switching delivery of calls. dPi offers all of the supported services using facilities obtained as UNEs, or the equivalents thereof, through commercial agreements. According to FCC Rules, facilities obtained as UNEs satisfy the requirement that an ETC provide the supported services using either its own facilities or a combination of its own facilities and resale of another carrier's services.

The federal USF consists of four programs, each administered by the Universal Service Administrative Company (“USAC”): 1) financial support to carriers serving high-cost areas; 2) the E-rate program, which provides discounted services (local and long distance telephone service, Internet access, and internal connections to eligible schools and libraries; 3) assistance to low income customers (discounted installation and monthly telephone services); and 4) discounted services to rural health care providers.

dPi has made clear that it is not planning to seek high-cost universal service funding if it is designated as an ETC in South Carolina. Accordingly, dPi limits its requested USF support to the federal USF low income support program, and certifies that all low income USF funding it receives will be used to subsidize rates for its Lifeline and Link-Up customers, consistent with 47 C.F.R. § 54.403.

On May 23, 2008, dPi and the ORS submitted a Stipulation setting out a number of terms under which dPi agreed to operate should the Commission grant its ETC Application. The Stipulation between dPi and the ORS is attached hereto as Exhibit A and incorporated herein by reference. As set out in the Stipulation, dPi agrees, in conformance with the South Carolina Lifeline program, to provide Lifeline customers an additional \$3.50 credit in order that the federal matching monies can be maximized. This additional credit will yield a Lifeline credit of \$13.50 per month which is consistent with the credit offered throughout BellSouth service area.

ANALYSIS

A. Federal Statutory Requirements

In Section 214(e)(2) of the Federal Act, Congress authorized state commissions to designate a common carrier as an ETC if the carrier meets the requirements of Section 214(e)(1). Section 214(e)(1) provides:

(1) Eligible Telecommunications Carriers

A common carrier designated as an eligible telecommunications carrier under paragraph (2), (3), or (6) shall be eligible to receive universal service support in accordance with section 254 and shall, throughout the service area for which the designation is received —

(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

(B) advertise the availability of such services and the charges therefore using media of general distribution.

A telecommunications carrier may be designated as an ETC , and receive universal service support, so long as it offers, within a service area, the services that are supported by federal universal service support mechanisms under Section 254 (c) of the Act, and so long as it adequately advertises the availability of, and the charges for, such services. The Commission notes that dPi bears the burden of proving it has met each of the necessary elements required for ETC designation.

1. Service Area

Section 54.207 of the FCC's rules defines a "service area" as a "geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms." 47 C.F.R. § 54.207(a). For service areas served by a non-rural incumbent local exchange company ("ILEC"), there are no restrictions on how a Commission identifies a "service area" for purposes of designating a competitive ETC. dPi has requested ETC designation in wire centers located throughout the service area of BellSouth/AT&T-South Carolina, a non-rural carrier. No party opposes dPi's service area designation. The Commission finds that dPi has met the service area requirement.

2. Required Service Offerings

The services to be supported by the USF under Section 254(a) are principally enumerated in Section 54.101(a) of the FCC's Rules, 47 CFR 54.101(a), as follows:

- (a) Voice grade access to the public switched network;
 - (b) Local usage;
 - (c) Dual tone multi -frequency signaling or its functional equivalent;
 - (d) Single-party service or its functional equivalent;
 - (e) Access to emergency services;
 - (f) Access to operator services;
 - (g) Access to interexchange service;
 - (h) Access to directory assistance; and
 - (i) Toll limitation for qualifying low-income consumers.
- As set out in its Application and Testimony, dPi will offer all of the services

enumerated above using facilities obtained from BellSouth/AT&T-South Carolina by means of a commercial agreement. Accordingly, dPi satisfies the requirement set out in Section 214(e)(1)(B).

Additionally, FCC rules obligate an ETC to provide the low income support programs known as Lifeline and Link-Up and advertise the availability of those services in a manner reasonably designed to reach those likely to qualify for them. 47 C.F.R. §§ 54.405 and 54.411. No party provided evidence or argument in opposition to dPi's evidence regarding the foregoing supported services. The Commission finds that dPi offers and has the capability to provide each of the nine supported services in the areas for which it seeks ETC status.

3. Required Advertising

In addition to the service offerings required by Section 214(e)(1)(B) of the Federal Act, FCC rules (CFR Parts 54.405 and 54.411) provide that an ETC must also publicize the availability of Lifeline and Link-Up services "in a manner reasonably designed to reach those likely to qualify for the service." Lifeline and Link-Up are the programs dPi intends to support with ETC funding. dPi provided testimony showing that it will advertise the availability and terms of its services throughout its designated area (Bollinger Direct Testimony at Page 13). No party challenged DPI's testimony. The Commission concludes that dPi has demonstrated that it will publicize the availability of Lifeline and Link-up in a manner reasonably designed to reach those likely to qualify for the service, as directed by CFR §54.405 and 54.411.

B. The FCC's ETC Order

On March 17, 2005, the FCC issued its ETC Order, to clarify existing requirements and impose additional federal requirements that the FCC will use in evaluating future federal applications for ETC designation. The FCC described its additional guidelines, codified at 47 CFR §54.202, as “the minimum requirements” it would use in designating a carrier as an ETC, and urged that state commissions apply these guidelines in their evaluation of ETC applications properly before such commissions. However, the FCC did not obligate state commissions to employ the additional guidelines. ETC Order at paragraphs 58-64.

Generally speaking, the additional FCC guidelines require that an ETC applicant demonstrate: (1) a commitment and ability to provide services, including service to all customers within its proposed service area; (2) that it will remain functional in emergency situations; (3) that it will satisfy consumer protection and service quality standards; (4) that it offers local usage comparable to that offered by the ILEC; and (5) an understanding that it may be required to provide equal access if all other ETCs in the designated service area relinquish their designations pursuant to section 214(e)(4) of the Federal Act. Further, the FCC augmented its existing annual certification and reporting requirements, to further the FCC's goal of ensuring that ETCs provide supported services throughout their service territories. Moreover, the FCC expanded its view of the public interest requirement for additional ETCs.

Although the additional requirements in the ETC Order are not binding on the Commission, we will consider them in this proceeding.

1. Specific Additional FCC Performance Requirements

First, pursuant to the ETC Order, an ETC applicant shall commit to providing service throughout its proposed designated service area to all customers making a reasonable request for service. 47 CFR §54.202(a)(1)(A).

dPi commits to providing service throughout its proposed ETC-designated service area to all customers. (Bollinger Direct Testimony at Page 13). No party questions that commitment. Consequently, the Commission concludes that dPi supplied sufficient evidence demonstrating its present ability to provide service throughout its proposed ETC-designated service area to all customers who make a reasonable request for service.

The FCC also expects an applicant to demonstrate its ability to furnish services to all customers in the foreseeable future. Thus, an ETC applicant shall submit to the FCC a five-year plan describing, with specificity, proposed improvements or upgrades to the applicant's network on a wire-center -by-wire -center basis throughout its proposed designated service area. Because dPi seeks ETC designation solely for reimbursement of subsidized Lifeline and Link-Up services to eligible customers, the Commission agrees with dPi and the ORS and finds that submission of a Five-Year Network Improvement Plan is not required at this time. However, should dPi seek to receive high cost support, it shall abide by the multiyear network improvement plan requirement.

Second, the ETC Order obliges an applicant to demonstrate its ability to remain functional in emergency situations. dPi has provided testimony that it has the ability to do so. Because dPi leases facilities from BellSouth/AT&T-South Carolina to serve its customers, it has the same ability to remain functional in emergency situations as this

company. No party disagrees. The Commission finds that dPi has met its burden on this issue.

Third, an ETC Applicant shall demonstrate that it will satisfy applicable consumer protection and service quality standards. 47 CFR §54.202(a)(3). dPi provided evidence that it will satisfy applicable consumer protection and service quality standards. (Bollinger Direct Testimony at Page 16). As part of its certification requirements for local exchange and interexchange services, dPi must abide by the service quality and consumer protection rules set forth in the Commission's regulations and applicable orders. No party questions dPi's evidence or commitments concerning the applicable standards. Consequently, the Commission concludes that dPi has demonstrated that it will satisfy appropriate consumer protection and service quality standards. This finding is conditioned on dPi's continuing compliance with the commitments it made in its certification docket and in this proceeding.

Fourth, an ETC Applicant shall demonstrate that it offers a local usage plan comparable to the one offered by the ILEC in the service areas for which it seeks designation. The FCC has not adopted a specific local usage threshold. dPi states that it includes specified quantities of usage in its rate plans and thereby complies with the requirement. Therefore, the Commission finds that dPi's local usage and rate plans meet the comparable local usage and rate plan requirement.

Fifth, an ETC Applicant shall certify its acknowledgement that the FCC may require it to provide equal access to long distance carriers if no other ETC is doing so within the service area. ETC Order at Paragraph 35; 47 CFR §54.202(a)(5). The

Commission finds that dPi meets the equal access requirement.

2. Additional FCC Certification and Reporting Requirements

In Paragraph 69 of its ETC Order, the FCC identified the following additional annual reporting and certification requirements for ETCs (some of which simply require annual certification of existing ETC performance requirements):

a) progress reports on the ETC's five-year service quality improvement plan, including maps detailing progress towards meeting its plan targets, an explanation of how much universal service support was received and how the support was used to improve signal quality, coverage, or capacity; and an explanation regarding any network improvement targets that have not been fulfilled. The information should be submitted at the wire center level;

b) detailed information on any outage lasting at least 30 minutes, for any service area in which an ETC is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect at least ten percent of the end users served in a designated service area, or that potentially affect a 911 special facility (as defined in subsection (e) of section 4.5 of the Outage Reporting Order). An outage is defined as a significant degradation in the ability of an end user to establish and maintain a channel of communications as a result of failure or degradation in the performance of a communications provider's network. Specifically, the ETC's annual report must include: 1) the date and time of onset of the outage; 2) a brief description of the outage and its resolution; 3) the particular services affected; 4) the geographic areas affected by the outage; 5) steps taken to prevent a similar situation in the future; and 6) the number of customers affected;

c) the number of requests for service from potential customers within its service areas that were unfulfilled for the past year. The ETC must also detail how it attempted to provide service to those potential customers;

d) the number of complaints per 1,000 handsets or lines;

e) certification that the ETC is complying with applicable service quality standards and consumer protection rules, e.g., the CTIA Consumer Code for Wireless Service;

f) certification that the ETC is able to function in emergency situations;

g) the amount of USF funding received by dPi during the reporting period;

h) certification that the ETC is offering a local usage plan comparable to that

offered by the incumbent LEC in the relevant service areas; and

i) certification that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

The FCC encouraged state commissions to adopt the foregoing reporting requirements and to apply them to all ETCs, not merely competitive ETCs. ETC Order, Paragraph 71. We will follow the FCC's recommendation, and we find that dPi has committed to complying with all of the applicable annual reporting requirements imposed on a recipient of low cost support. The Commission concludes that dPi must file reports with the ORS as set out in the parties' Stipulation.

3. The Public Interest Requirement

Section 214(e)(2) of the Federal Act requires a finding that additional ETC designations be in the public interest. In the instant case, dPi has demonstrated that its application for ETC designation is in the public interest, within the meaning of the ETC Order. dPi asserts that since low income support and Lifeline is designed to reduce the monthly cost of telecommunications services for eligible consumers, and is distributed on a per-customer basis, and is directly reflected in the price that the eligible customer pays, it is assured that all support received by the carrier is used to provide Lifeline services to consumers, thus promoting Lifeline and the availability of telephone service to low income users. No party contends that dPi does not meet the public interest test.

In the Commission's view, the designation of dPi as an ETC will increase customer choice for low income consumers eligible for Lifeline and Link-Up support in the areas requested. Customers who can obtain this telecommunications service will likely benefit

from additional rate plan options and increased access to emergency services.

The Commission notes that dPi's specific voluntary commitment to comply with the guidelines in the ETC order – and specifically with the ORS' tailoring of those guidelines to fit both the Commission's existing rules and Orders and the particular circumstances of dPi's Application – is a critical component supporting a positive public interest finding. Thus, subject to the commitments and conditions discussed in this Order, the Commission concludes that dPi has shown that its designation as an additional ETC is in the public interest for its proposed ETC designated area.

C. Other Considerations

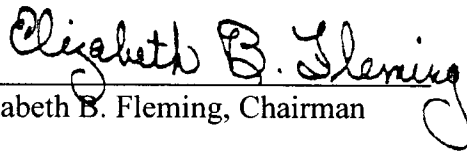
With regard to annual recertification, we hold that the annual recertification required by the FCC and the Universal Service Administrative Company (USAC) is adequate and that the Company should not be required to apply for additional recertification to this Commission on an annual basis. However, since dPi seeks to be designated only in non-rural exchanges of BellSouth/AT&T-South Carolina, expansion to rural high cost areas would require additional designation proceedings before this Commission. Additionally, dPi shall include in its quarterly Service Quality Report the number and justification of applications held for more than 30 days and the number and justification of applications that were denied, and dPi shall submit a two-year plan that describes the carrier's plans for advertising and outreach programs for identifying, qualifying and enrolling eligible participants in the Lifeline and Link-Up programs.

IT IS THEREFORE ORDERED THAT:

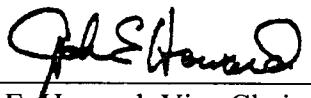
1. dPi is designated as an ETC, as of the effective date of this order, in the requested areas served by AT&T-South Carolina.
2. dPi shall abide by its commitment to provide service throughout its ETC-designated service area to all customers making a reasonable request for service, including low-income customers.
3. dPi shall include in its quarterly Service Quality Report the number and justification of applications held for more than 30 days and the number and justification of applications that were denied.
4. dPi shall submit a two-year plan that describes the carrier's plans for advertising and outreach programs for identifying, qualifying, and enrolling eligible participants in the Lifeline and Link-Up programs.
5. All federal USF funding received as a result of this Order will be used for Lifeline and Link-Up support for low income customers.
6. Should the Commission determine that dPi has not honored its commitments and plans as set forth before the Commission, or has failed to follow the applicable statutes, rules or regulations, the Commission may deny dPi's annual recertification as an ETC.
7. The dPi -ORS Stipulation is approved.

8. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Elizabeth B. Fleming, Chairman

ATTEST:


John E. Howard, Vice Chairman

(SEAL)

STIPULATION

RE: Docket No. 2008-31-C - Application of dPi Teleconnect, LLC for Certification as an Eligible Telecommunications Carrier

dPi Teleconnect, LLC ("dPi Teleconnect") is a certificated CLEC that offers local exchange service and meets the facilities requirements identified in 47 CFR 54.201(f) for universal service funding by leasing the physical components of the telecommunications network necessary to provide the nine services identified in 47 CFR 54.201(d)(1) through its Commercial Agreements with BellSouth. In addition, dPi Teleconnect agrees to advertise the availability of supported services using media of general distribution.

The federal USF provides support to four programs, each administered by the Universal Service Administrative Company ("USAC"): 1) financial support to carriers serving high cost areas; 2) the E-rate program, which provides discounted services (local and long distance telephone service, Internet access, and internal connection) to eligible schools and libraries; 3) assistance to low income consumers (discounted installation and monthly telephone services); and 4) discounted service to rural health care providers.

dPi Teleconnect has requested ETC designation in wire centers located throughout, the service area of BellSouth/AT&T South Carolina, a non-rural carrier. Additionally, dPi Teleconnect has limited its requested USF support to the federal USF low income support program. dPi Teleconnect certifies that all low income USF funding it receives will be used to provide a credit to its Lifeline and Link-up eligible customers, consistent with 47 CFR 54.403. Additionally, dPi Teleconnect agrees to offer Lifeline packages and Link-up service consistent with the rates, terms, and conditions contained in its tariff and will publish the availability of these same services on its website.

dPi Teleconnect agrees to include in its quarterly Service Quality Report the number and justification of applications held for more than 30 days and the number and justification of applications that were denied. dPi will only seek direct low income support from the Federal Universal Service Fund for those lines provided through the use of its own facilities or through a combination of its own facilities and the leased facilities of another carrier. dPi Teleconnect also agrees to report quarterly the percentage of consumers offered Lifeline via resale versus commercial agreements.

Until modified by the Commission, dPi Teleconnect agrees to utilize TANF, Food Stamps, and Medicaid as the qualifying criteria for Lifeline and Link-up service throughout the BellSouth service territory.

dPi Teleconnect agrees to provide Lifeline customers an additional \$3.50 credit in order that the federal matching monies can be maximized. This will yield a Lifeline credit of \$13.50 per month which is consistent with the credit offered throughout BellSouth service area.

dPi Teleconnect agrees that it will abide by all advertising, reporting and verification requirements established by the FCC and Commission.

Should dPi Teleconnect seek designation as an ETC for high cost support, dPi Teleconnect will file an additional and separate application with the Commission that addresses all applicable state and federal laws, rules and regulations, including, but not limited to, an appropriate build-out plan that includes the use of its own facilities in addition to those obtained through commercial agreements to provide services to unserved areas.

dPi Teleconnect shall submit a two-year plan that describes the carrier's plans for advertising and outreach programs for identifying, qualifying and enrolling eligible participants in the Lifeline and Link Up programs.

dPi Teleconnect shall comply with all applicable state and federal laws, rules, and regulations regarding ETC designation and reporting requirements. More specifically, dPi Teleconnect agrees to abide by the Commission regulations regarding designation of an eligible telecommunications carrier to become effective May 23, 2008. dPi Teleconnect also agrees to abide by the Commission regulations to be finalized regarding annual reporting requirements.


dPi Teleconnect represents that should any outstanding litigation liabilities become immediately due, that the payment of those liabilities will not impair dPi Teleconnect from continuing its operations and providing service to its South Carolina customers.

dPi Teleconnect further represents that any amount of money in dispute pursuant to pending litigation is not a material amount relative to its monthly revenues.

ORS does not oppose the application of dPi Teleconnect for certification as an eligible telecommunications carrier.

In the event ORS conducts cross-examination of dPi Teleconnect, such cross-examination shall not be inconsistent with the agreed upon terms contained herein.

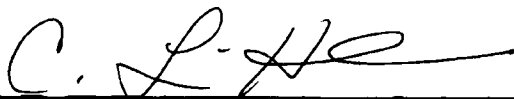
On Behalf of dPi Teleconnect LLC:



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Lance J.M. Steinhart, P.C.
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On Behalf of ORS:

A handwritten signature in black ink, appearing to read 'C. L. Hammonds', is written over a horizontal line.

C. Lessie Hammonds, Esquire
1441 Main Street, Suite 300
Columbia, South Carolina 29201

May 22, 2008